

Supreme Court Rules That Condominium Homeowner's Association Cannot Sue Developer More Than Two Years After Developer's Dissolution

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The Supreme Court recently ruled in *Ballard Square Condominium Owners Association v. Dynasty Construction Company* that a 2006 amendment to Washington's laws regarding lawsuits against dissolved businesses applies retroactively to bar lawsuits initiated prior to the law's effective date.

Ballard Square arose when a condominium homeowner's association filed suit against the developer alleging water intrusion damage caused by, among other things, defective building siding. The developer corporation had dissolved in October of 1995, shortly after sale of the last Ballard Square unit, but the association did not discover the damage until 1996 and 1997, and did not file suit until October 2002.

At the time the association brought suit, claims against a dissolved corporation were barred two years after its dissolution, but only if the cause of action arose prior to the dissolution. Where the cause of action arose after dissolution, as was the case in *Ballard Square*, the trial court held that there was no right to sue and dismissed the lawsuit against the dissolved developer corporation. The court of appeals affirmed. The Supreme Court disagreed, and held that under the prior version of the statute, the association could maintain its suit because there was no statute specifically barring the lawsuit where the cause of action arose after the developer corporation was dissolved.

The Washington legislature revised the statute regarding lawsuits against dissolved corporations to put a limit on lawsuits filed after dissolution regardless of when the cause of action arose. This revision, RCW 23B.14.340, put a limit of two years from dissolution on any right to sue where the dissolution was prior to the June 2006 effective date. (The limit is three years for dissolutions after the revision's effective date.) The Supreme Court held that the revision applied to all lawsuits, regardless of when the damage was discovered, and regardless of when the lawsuit was filed.

The *Ballard Square* ruling could have significant impacts for developers, contractors, and homeowner associations currently involved in litigation, as the revision may affect lawsuits already in progress. It may also have an impact on associations contemplating lawsuits, which must file against a dissolved developer before the time limit expires. From the developer and contractor's point of view, prompt dissolution of single-project entities may provide significant insulation from post-dissolution suits. Consultation with legal counsel is encouraged regarding the ramifications of the *Ballard Square* ruling with regard to specific client matters.